

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) **Notice of Motion for Relief**
) **from Automatic Stay in a**
 Debtor(s)) **Chapter 11/12 Case,**
) **and Notice of Hearing Thereon**

YOU ARE NOTIFIED THAT:

1. A motion was filed by _____ for relief from the automatic stay protecting the debtor(s) and debtor's property, as provided by 11 U.S.C. § 362.
2. The name and address of the moving party's attorney (or moving party, if no attorney) are:
3. If you wish to resist the motion you must, within 14 days of the service date shown below, file a written response with the clerk at 1050 SW 6th Ave. #700, Portland OR 97204 or 405 E 8th Ave. #2600, Eugene OR 97401. If the response is served in paper, you must also file a certificate showing the response has been served on the moving party's attorney.
4. A response must state the facts upon which relief from the automatic stay is resisted. See [LBF 720.50](#) for details.
5. If you file a timely response, a hearing on the motion will be held as follows:

Date: _____ **Time:** _____

Location: Courtroom # _____, _____

Telephone Hearing [**NOTE:** See [LBF 888](#), Telephone Hearing Requirements]

Call-In Number: (888) 684-8852

Access Code: 4950985 for Judge Trish M. Brown (tmb)
5870400 for Judge David W. Hercher (dwh)
1238244 for Judge Peter C. McKittrick (pcm)
3388495 for Judge Thomas M. Renn (tmr)
Other _____

No testimony will be taken at the hearing. If no timely response is filed, the hearing may be cancelled. Parties are encouraged to check the hearing calendar at <https://www.orb.uscourts.gov> after the response deadline has passed.

6. If a timely response is not filed, then either:

- a. The court may sign an order without further notice, submitted by the moving party, granting relief from the stay; or
- b. The stay will expire under the terms of 11 U.S.C. § 362(e).

I certify that on _____ (1) this notice, (2) [LBF 720.50](#) if this notice was served on paper, (3) [LBF 888](#) if this notice was served on paper and a telephone hearing will be held, and (4) the motion, were served pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 4001 and FRBP 7004 on the debtor(s), U.S. Trustee, trustee, members of any committee appointed pursuant to 11 U.S.C. § 1102 or its authorized agent [or, if no committee, on all creditors included on the list filed pursuant to FRBP 1007(d)], and their respective attorneys.

Signature of Moving Party or Attorney

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6 and

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11

12 IN THE UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF OREGON

14 In re

15 NORPAC Foods, Inc. [TIN: 9330],
16 Hermiston Foods, LLC [TIN: 3927], and
17 Quincy Foods, LLC [TIN: 7444],

18 Debtors.
19

Case No. 19-62584-pcm11
LEAD CASE

(Jointly Administered with Case Nos.
19-33102-pcm11 and 19-33013-pcm11)

**SYNGENTA SEEDS, LLC'S EMERGENCY
MOTION FOR RELIEF FROM THE
AUTOMATIC STAY**

EXPEDITED HEARING REQUESTED

21 Syngenta Seeds, LLC ("Syngenta"), by and through its undersigned counsel, moves for relief
22 from the automatic stay ("Motion") in order to exercise its rights and/or remedies under applicable
23 law as to its collateral, including the foreclosure of its liens. In support thereof, Syngenta states as
24 follows:

25 1. In the months leading to the Debtors' bankruptcy filing, Syngenta delivered bean, corn
26 and snap pea seed to the Debtors for which Syngenta remains owed at least \$1,020,593.32.

1 2. Pursuant to Oregon’s statutory Grain Producer’s Lien (O.R.S. 87.750 *et seq.*), upon
2 delivery of the seed, Syngenta acquired a lien on all inventory of the Debtors and the proceeds
3 received by the Debtors from the selling of the inventory.

4 3. Syngenta has filed GL-1 Notices of Filing Extension of Grain Producer’s Lien with
5 the Oregon Secretary of State, which extended Syngenta’s liens with respect to at least \$887,902.42
6 of the unpaid invoices. *See* O.R.S. 87.762.

7 4. On October 18, 2019, Syngenta filed its proofs of claim, assigned Claim Numbers
8 415, 416, and 417, asserting a secured claim in the amount of \$887,902.42.

9 5. Throughout the Debtors’ Chapter 11 proceedings, the parties and Court have
10 acknowledged and recognized that the statutory liens of growers and grain producers are senior to
11 CoBank:

12 i. On September 13, 2019, the Court entered the *Final Order Granting Debtor’s*
13 *Motion for Authorization to Obtain Secured Credit* (the “Final DIP”) [Docket No. 147]
14 providing that the sale proceeds will be distributed: “(ii) second, to CoBank in an amount
15 sufficient to fully repay the outstanding loans and other obligations and amounts owing to
16 CoBank ..., **provided that all Senior Liens are paid, assumed by the buyer, or otherwise**
17 **provided for**” (emphasis added). Senior Liens are defined in the Final DIP to include
18 Growers Liens, which are defined as “all valid, duly perfected, unavoidable agricultural
19 produce and grain producer liens pursuant to ORS 87.705 and ORS 87.755 and processor and
20 preparer liens pursuant to RCW 60.13.020 and RCW 60.13.030.”

21 ii. On September 25, 2019, the Court entered the Bidding Procedures Order
22 approving the form *Notice of Motion to Approve Sale of Assets to OPC or Higher and Better*
23 *Bidder at Auction, Auction, Bidding Procedures, Sale Hearing, and Objection Deadlines* (the
24 “Sale Notice”) [Docket No. 203]. The Sale Notice explained that under the Asset Purchase
25 Agreement (“APA”) between Oregon Potato Company (“OPC”) and the Debtors, OPC would
26 take title to assets subject to certain “Permitted Encumbrances” which “include valid

agricultural liens (which includes agricultural produce and grain producer liens pursuant to ORS 87.705 and ORS 87.755 and processor and preparer liens pursuant to RCW 60.13.020 and RCW 60.13.030).”

iii. On October 29, 2019, the Court’s *Order Approving Sale* (“Sale Order”) [Docket No. 317] again provided that the Senior Liens would attach to the sale proceeds and paid in advance of CoBank or at least that funds sufficient to pay such Senior Liens in full would be held in escrow until the claims were allowed or disallowed. *See* Sale Order at ¶ 10.

6. On November 1, 2019, following the failure to consummate a sale of the Debtors' assets by October 31, 2019, CoBank filed its *Affidavit in Support of Motion for Relief from Stay* [Docket No. 327] ("CoBank's MSR"), requesting relief from stay to pursue all its rights and remedies under applicable law, including, but not limited to, appointing a receiver to administer the collateral of CoBank.

ARGUMENT

7. If the Court grants CoBank relief from stay, Syngenta should be granted relief from stay as well so that it can protect its senior lien position from any actions that CoBank may take, including permitting Syngenta to commence a foreclosure action if it deems such action necessary to protect its interest in the collateral.

8. Section 362(d) of the Bankruptcy Code states:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

9. Lack of adequate protection is but one example of “cause” for relief from stay under section 362(d)(1). “Cause” for granting relief from stay is not defined in the Bankruptcy Code. The

1 nonexclusive listing of forms of potential relief (“such as terminating, annulling, modifying, or
2 conditioning” the stay) underlines the discretion of the court in crafting an order tailored to the
3 particular circumstances of the case before it.

4 10. Here, Syngenta is entitled to relief from stay under 362(d)(1) for cause in order to
5 protect its liens in any foreclosure, receivership, or liquidation proceeding that CoBank (or any other
6 secured creditor) may initiate, and to enforce any rights or remedies Syngenta might have under
7 applicable law.

8 11. Syngenta also lacks adequate protection as the Debtors have not provided any
9 information to confirm that Syngenta’s collateral remains of sufficient value to pay Syngenta’s lien
10 claims in full. *See* 11 U.S.C. § 362(g) (placing the burden of proof on the party opposing relief from
11 stay on all issues other than the debtor’s equity in the property).

12 12. Relief from stay is further warranted under § 362(d)(2) because the Debtors have little
13 to no equity in the collateral as evidenced by the Debtors’ financial reports for September 2019
14 [Docket No. 333], and the collateral is not necessary for an effective reorganization because the
15 Debtors do not intend to reorganize.

16 13. Syngenta requests that relief from stay be effective immediately, and that the Court
17 waive the fourteen day stay provided for under Rule 4002(a)(3) of the Federal Rules of Bankruptcy
18 Procedure.

19 WHEREFORE, Syngenta respectfully requests that the Court grant Syngenta relief from stay
20 and such other and further relief as deemed appropriate for the reasons stated herein. A proposed
21 form of order is attached hereto as Exhibit A.

22 DATED this 11th day of November, 2019.
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SHUMAKER, LOOP & KENDRICK, LLP

By /s/ David H. Conaway

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Attorneys for Syngenta Seeds, LLC

EXHIBIT A – PROPOSED ORDER

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13 IN THE UNITED STATES BANKRUPTCY COURT
14 FOR THE DISTRICT OF OREGON

15 In re
16 NORPAC Foods, Inc. [TIN: 9330],
17 Hermiston Foods, LLC [TIN: 3927], and
18 Quincy Foods, LLC [TIN: 7444],
19 Debtors.
20
21

Case No. 19-62584-pcm11
LEAD CASE

(Jointly Administered with Case Nos.
19-33102-pcm11 and 19-33013-pcm11)

**ORDER GRANTING SYNGENTA
SEEDS, LLC'S EMERGENCY MOTION
FOR RELIEF FROM THE AUTOMATIC
STAY**

22 This matter came before the Court for hearing on Syngenta Seeds, LLC's Emergency Motion
23 for Relief from Stay ("Motion"). The Court having considered the Motion, the Court's records and
24 files, and arguments of counsel at the hearing, and being fully advised, and finding that the Motion is
25 well taken, it is therefore
26

1 ORDERED:

2 1. The Motion is granted;

3 2. Syngenta is hereby granted relief from the stay imposed by 11 U.S.C. § 362, and
4 Syngenta may hereafter pursue all of its rights and remedies at law or in equity, including, without
5 limitation, (a) pursuing its rights against the collateral secured by Syngenta's liens as described in the
6 Motion including commencing a foreclosure proceeding, and (b) participating in any other
7 proceedings filed by any other creditor or lienholder against the Debtors or the collateral in state or
8 federal court; and
9

10 3. The provisions of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure are
11 hereby waived by the Court.
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13 ###

14 PRESENTED BY:
15 SHUMAKER, LOOP & KENDRICK, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2019 I served the foregoing **Emergency Motion for Relief from Stay** upon:

- **STEPHEN P ARNOT** steve.arnot@usdoj.gov
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by the following indicated method or methods on the date set forth below:



CM/ECF system transmission.



E-mail. As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.



First-class mail, postage prepaid.

I hereby certify that on November 12, 2019, I shall serve the foregoing **Emergency Motion for Relief from Stay** via first class mail upon:

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DATED this 11th day of November, 2019.

/s/ Ronald D. P. Bruckmann
Ronald D. P. Bruckmann